

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)

Missouri Democratic State Committee
and Michael Kelley, as Treasurer)

) MUR 4831

) MUR 5274

CONCILIATION AGREEMENT

Matter Under Review 4831 was initiated by a signed, sworn, and notarized complaint by John Hancock, Executive Director of the Missouri Republican Party. Matter Under Review 5274 was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. An investigation was conducted and the Federal Election Commission ("Commission") found probable cause to believe that the Missouri Democratic State Committee and Michael Kelley, as treasurer ("the Respondent" or "the MDSC"), accepted contributions earmarked for Missouri Senate candidate Jeremiah "Jay" Nixon ("Nixon") and failed to report or forward the contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8(a), 110.6(b)(2)(iii) and 110.6(c)(1). In addition, the Commission found probable cause to believe that the MDSC violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.7(b)(2) by making excessive coordinated expenditures for the Nixon Campaign Fund.

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the MDSC and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The MDSC has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

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III. The MDSC enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The MDSC is a political committee within the meaning of 2 U.S.C. § 431(4).
2. Michael Kelley is the treasurer of the MDSC.

Earmarked Contributions

3. Section 441a(a)(8) of Title 2 of the U.S. Code and 11 C.F.R. § 110.6(c)(1) require a committee that receives contributions earmarked for a candidate or candidate committee to report the original source of the contribution and the intended recipient committee to the Commission and to the intended recipient committee. 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 110.6(c)(1).

4. Section 110.6(b)(2)(iii) of Title 11 of the Code of Federal Regulations requires a committee that receives contributions earmarked for a candidate or candidate committee, to forward the contribution to the candidate or the committee. 11 C.F.R. § 110.6(b)(2)(iii).

5. Between August and November 1998, the MDSC accepted 17 contributions totaling \$19,285 that bore indicia of earmarking for Nixon or his principal campaign committee, the Nixon Campaign Fund ("NCF").

6. Some of the earmarked contributions consisted of checks, the memo lines of which were annotated, "Nixon," "Nixon-Win," "J. Nixon Fund," "Jay Nixon Campaign Contribution" and "Nixon, not for Skelton or Danner." In two instances, contributors enclosed their contributions with letters stating that their contributions were "to aid in" the Nixon campaign or instructing the MDSC to spend the money on Nixon. Two of the contribution checks were originally written to the NCF, but deposited by the MDSC. Several checks were attached to NCF campaign materials. The MDSC deposited all of the earmarked contributions into a bank account, which it then used to fund coordinated expenditures for Nixon pursuant to 2 U.S.C. § 441a(d).

Excessive Coordinated Expenditures

7. National and state party political committees may make expenditures in connection with the general election campaigns of candidates for federal office subject to certain limits. 2 U.S.C. § 441a(d)(1); 11 C.F.R. § 110.7(b). For Senatorial candidates, such committees may not make expenditures in excess of the greater of two cents multiplied by the voting age population of the state or \$20,000. 2 U.S.C. § 441a(d)(3)(A); 11 C.F.R. § 110.7(b)(2)(i). A national party committee may make these expenditures through a designated agent, including state and subordinate party committees. 11 C.F.R. § 110.7(a)(4).

8. The term "expenditures" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9)(A)(i).

9. Only expenditures that are "coordinated" between a party and a candidate are subject to the Section 441a(d) limitations. Expenditures made by any person in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his or her authorized political committees, or their agents shall be considered to be a contributions to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i).

10. The MDSC could have made coordinated expenditures for Nixon of \$260,140 pursuant to 2 U.S.C. § 441a(d)(3)(A). It was also allowed to contribute \$5,000 to the NCF pursuant to 2 U.S.C. § 441a(a)(2)(A). In addition, the Democratic Senatorial Campaign Committee ("DSCC") authorized the MDSC to use \$79,000 of the DSCC's expenditure limitation. The MDSC could thus have spent a total of \$344,140 on Nixon. The MDSC, however, made coordinated expenditures for Nixon in the amount of \$372,840. Thus, it made excessive coordinated expenditures for Nixon of \$28,700.

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11. The MDSC contends that the expenditures at issue were authorized after the fact by the DSCC, which transferred \$40,000 in coordinated expenditure authority to the MDSC on May 25, 1999. The MDSC contends that at all times, it and the DSCC remained within their combined coordinated expenditure limit.

V. The MDSC received contributions earmarked for Nixon that it failed to report to the Commission or the NCF in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

VI. The MDSC did not forward the earmarked contributions to the NCF in violation of 11 C.F.R. § 110.6(b)(2)(iii).

VII. The MDSC made excessive coordinated expenditures for Nixon in violation of 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.7(b)(2).

VIII. The MDSC contends that it did not knowingly or willfully violate 2 U.S.C. §§ 441a(a)(8) and 441a(a)(2)(A) or 11 C.F.R. §§ 110.6(b)(2)(iii), 110.6(c)(1) or 110.7(b)(2).

IX. The MDSC will pay a civil penalty to the Federal Election Commission in the amount of \$16,000.

X. The MDSC will cease and desist from violating 2 U.S.C. §§ 441a(a)(8) and 441a(d)(3)(A) and 11 C.F.R. §§ 110.6(b)(2)(iii), 110.6(c)(1), and 110.7(b)(2)(i).

XI. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XIII. The MDSC shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement(s) contained in this agreement and to so notify the Commission.

XIV. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY:



Gregory R. Baker
Acting Associate General Counsel

10/8/03
Date

FOR THE MISSOURI DEMOCRATIC
STATE COMMITTEE:



(Name) Brian G. Srobacka
(Position) General Counsel

2 Oct. 2003
Date

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